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Christopher P. Viens

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EXAMINER

PLUMMER, ELIZABETH A

ART UNIT

PAPER NUMBER

3635

MAIL DATE

DELIVERY MODE

06/19/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/736,131

Applicant(s)

VIENS, CHRISTOPHER P.

Examiner

Elizabeth A. Plummer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-11, 17, 18 and 20 is/are allowed.
- 6) ☐ Claim(s) 1-3, 12-16 and 19 is/are rejected.
- 7) ☒ Claim(s) 4-7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Applicant's amendments and arguments received 04/06/2007 have been entered and considered. Claims 14-20 have been added. An examination of pending claims 1-20 is herein presented.

#### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 14-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 14, the term "high" is a relative term. It is unclear what range of R values would be considered high R values.

#### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Bradford (US Patent 5,950,368). Regarding claim 1, Bradford discloses a ceiling hatch comprising a frame (18) having an upper edge and a lower edge and passage bounded by a sidewall passing therebetween (Fig. 1,2,3), said passage extending from said lower edge to said upper edge and having its minimum cross section at said lower edge (Fig. 1,2,3); an insulating block (24) bounded by a top surface (26), a bottom surface (28) and a side

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surface which is configured such that said insulating block is positionable substantially within said passage and substantially fills the same (Fig. 1), assuming that said side surface resides in close proximity to said sidewall of said frame (Fig. 4), thereby impeding air flow between said side surface and sidewall; a hinge (32) operably attached to said frame and to said insulating block (Fig. 1,2,3), providing a pivotable action between said insulating block and said frame about a pivot access (Fig. 3), said hinge being so positioned and said side surface of said insulating block and said passage through said frame being so configured as to allow said insulating block to be swung out of said passage on an interference free path (Fig. 3); and means for maintaining said bottom surface of said insulating block in a horizontal plane when said insulating block resides substantially within said passage (Fig. 1).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 13 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bradford (US Patent 5,950,368).

a. Regarding claim 13, Bradford discloses the invention as claimed except for said close proximity (Fig. 4) of said side surface to said sidewall is such that said side surface is separated from said sidewall by a distance of less than about 1/8 inch over a substantial portion of said surface and said sidewall. It would

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have been a matter of obvious design choice to one of ordinary skill in the art at the same time the invention was made to form the close proximity with a distance less than 1/8 inch, as Bradford is concerned with creating a tight seal (abstract).

b. Regarding claim 19, Bradford discloses the invention as claimed except for the frame having a height of at least 11 inches. However, it would have been a matter of obvious design choice to make the frame at least 11 inches, as such a modification would have involved a mere change in size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

7. Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bradford (US Patent 5,950,368) in view of Hackbarth et al. (US Patent 6,578,327).

a. Regarding claim 2, Bradford discloses the invention as claimed except for the ceiling hatch comprising a rim mounted to said lower edge of said frame and extending outwardly therefrom to provide a flange. However, it is well known in the art of ceiling hatches that a frame can further comprise a rim mounted to the lower edge of the frame and extend outwardly therefrom to provide a flange. For example, Hackbarth et al. teaches a ceiling hatch (10) with a frame (12) further comprising a rim (66) mounted to said lower edge of said frame (12) (Fig. 1) and extending outwardly therefrom to provide a flange (Fig. 1) in order to more secure mount the ceiling hatch. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bradford to include a rim mounted to the lower edge of said frame and extend outwardly therefrom to

provide a flange, such as taught by Hackbarth et al., in order to make a more durable and secure ceiling hatch assembly.

b. Regarding claim 3, said means for maintaining said bottom surface horizontal (Fig. 1) is provided by a lip extending inwardly from said lower edge and formed by a portion of said rim, said lip serving to support said bottom surface of said insulating block (Fig. 1).

8. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bradford (US Patent 5,950,368) in view of Helbig (US Patent 4,312,423). Regarding claim 12, Bradford discloses the invention as claimed except for the ceiling hatch further comprising a block cap attached to said top surface of said insulating block and extending therebeyond so as to engage said upper edge of said frame when said bottom surface of said insulating block is substantially horizontal. However, it is notoriously well known in the art of ceiling hatches that a block cap can be attached to said top surface of said insulating block and extending therebeyond so as to engage said upper edge of said frame when said bottom surface of said insulating block is substantially horizontal. For example, Helbig teaches a ceiling hatch with an insulating block (24) further comprising a block cap (28) attached to said top surface of said insulating block and extending therebeyond so as to engage said upper edge of said frame when said bottom surface of said insulating block is substantially horizontal (Fig. 7; column 3, lines 62-64) in order to create a better thermal barrier. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bradford to use an additional block cap attached to said top surface of said insulating

block and extending therebeyond so as to engage said upper edge of said frame when said bottom surface of said insulating block is substantially horizontal, such as taught by Helbig, in order to create a better barrier.

9. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Muth et al. (US Patent 4,738,054) in view of Hackbarth et al. (US Patent 6,578,327).

a. Regarding claim 1, Muth et al. discloses a ceiling hatch comprising a frame (10) having an upper edge and a lower edge and passage bounded by a sidewall passing therebetween (Fig. 9), said passage extending from said lower edge to said upper edge; an insulating block (11) bounded by a top surface, a bottom surface and a side surface (Fig. 1,2) which is configured such that said insulating block is positionable substantially within said passage and substantially fills the same (Fig. 9), assuring that said side surface resides in close proximity to said sidewall of said frame, thereby impeding air flow between said side surface and side wall (Fig. 9) ; a hinge (61) operably attached to said frame and to said insulating block, providing a pivotable action between said insulating block and said frame about a pivot axis (Fig. 9; column 3, lines 62-68), said hinge being so positioned and said side surface of said insulating block and said passage through said frame being so configured as to allow said insulating block to be swung out of said passage on an interference free path (Fig. 9), and means for maintaining (28, 81) said bottom surface of said insulating block in a horizontal plane (Fig. 2; column 6, lines 1-4) when said insulating block resides substantially within said passage. Muth et al. does not disclose that the

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minimum cross section is at a lower edge of the passage. However, it is notoriously well known in the art that the minimum edge of a frame for a ceiling hatch can be at the lower edge of the frame. For example, Hackbarth et al. teaches a ceiling hatch (10) with a frame (16) having an upper edge and a lower edge and a passage bounded by a sidewall pass therebetween (Fig. 1), wherein the cross section is constant, inherently making the cross section at the lower edge (Fig. 1) the minimum cross section. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Muth et al. to have a cross section that is constant, inherently making the cross section at the lower edge the minimum cross section, such as taught by Hackbarth et al., in order to make the frame easier and quicker to manufacture.

10. Claims 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muth et al. (US Patent 4,738,054) in view of Hackbarth et al. (US Patent 6,578,327) as applied to claim 1 above, and further in view of McCoy, Jr. et al. (US Patent 6,014,841).

a. Regarding claims 14 and 15, Muth et al. in view of Hackbarth et al. discloses the invention as claimed except for the insulating block (11) being made from polymer foam providing a high R value. However, it is notoriously well known in the art of ceiling hatches can be made from polymer foam, which inherently has a high R value. For example, McCoy, Jr. et al. teaches a ceiling hatch (10) made of a polymer foam (48) (column 3, lines 21-25) in order to provide an effective thermal barrier (abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Muth et al.



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in view of Hackbarth et al. to form the insulating block out of a polymer foam with a high R value, such as taught by McCoy, Jr. et al., in order to create a more effective thermal barrier.

b. Regarding claim 16, Muth et al. further discloses a layer of fire retardant material attached to the polymer foam and forming said bottom surface of said block (column 3, lines 21-51; Fig. 4).

***Allowable Subject Matter***

11. Claims 8-11, 17-18 and 20 are allowed.

12. Claims 4-7 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

13. Applicant's arguments with respect to claims 1-13 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth A. Plummer whose telephone number is (571) 272-2246. The examiner can normally be reached on Monday through Friday, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. CHAPMAN/  
PRIMARY EXAMINER  
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